

REMARKS

Claims 1, 3-4, 6-7, 9-10, 13-16, 18-24, 26 and 27 were pending in the subject application. Claims 1, 3-4, 6-7, 9-10, 13-16 and 18-22 are allowed. Claims 23 and 27 stand rejected. Claims 24 and 26 are objected to. Claims 24, 26 and 27 have been canceled. Currently, claims 1, 3-4, 6-7, 9-10, 13-16 and 18-23 are pending in the subject application.

Applicants take this opportunity to thank the Examiner for his time during the telephone interview of August 29, 2008 wherein the rejection of claim 23 under 35 U.S.C. § 112, second paragraph was discussed.

A. Objection of claims 24 and 26

Claims 24 and 26 are objected to because they are seen as a duplication of allowed claim 1. Applicants respectfully disagree with the objection. However, in order to expedite prosecution of this application, Applicants cancel claims 24 and 26.

Hence, the Applicants respectfully submit that the objection is obviated and request that the objection be withdrawn.

B. Rejection of claim 23 under 35 U.S.C. 112, second paragraph

Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which the applicant regards as the invention. Specifically, the Examiner asserts that claim 23 recites manufacturing a food product from said resistant starch, but does not recite the process steps for the same. In the absence of process steps for the said method of manufacturing the claim is rendered indefinite. Applicants respectfully disagree.

Applicants spoke with Examiner Krishnan during a telephone interview on August 29, 2008 regarding the rejection of claim 23 under 35 U.S.C. § 112, second paragraph. Examiner Krishnan agreed that claim 23 is indeed definite, thus removing the rejection. Hence, the Applicants respectfully submit that the rejection is obviated and request that the rejection be withdrawn.

C. Rejection of claim 27 under 35 U.S.C. 102(b)

Claim 27 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,358,729 to Ohkuma *et al.* (hereinafter, "Ohkuma").

The Examiner asserts that claim 27 is a product-by-process claim, which is a product claim. The Examiner further asserts that product by process claims are not limited to the manipulations of the recited steps, only to the structure implied by the steps.

Applicants respectfully disagree. However, in order to advance prosecution of the remaining claims of this application, Applicants have canceled claim 27. Applicants expressly disagree that the claimed process results in a similar product as that of the prior art, and assert that providing evidence of a different product would be burdensome, at this time, due to the analytical techniques required. Applicants retain the right to reassert claim 27 at a future date in a continuation application.

Hence, the Applicants respectfully submit that the rejection is obviated and request that this rejection be withdrawn.

D. Status of Other Related Cases

U.S. Patent Application Serial No. 10/959,792 was filed on October 6, 2004, and is entitled METHOD OF PRODUCING RESISTANT STARCH AND PRODUCTS FORMED THEREIN. A Non-Final Office Action was mailed on May 20, 2008, which rejected claims 1-35. A response to Non-Final Office Action was filed on August 20, 2008.

CONCLUSION

Applicants submit that claims 1, 3-4, 6-7, 9-10, 13-16, and 18-23 of the subject application recite novel and non-obvious methods for producing a resistant starch. In view of the remarks presented above, Applicants respectfully submit that the subject application is in condition for allowance. Accordingly, reconsideration of the rejection and allowance of all pending claims is earnestly solicited.

If the undersigned can be of assistance to the Examiner in addressing issues to advance the application to allowance, please contact the undersigned at the number set forth below.

Respectfully submitted,



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